

## **REMARKS/ARGUMENTS**

Applicant respectfully requests entry of this Amendment and continued examination of this patent application, including reconsideration of the Final Office Action dated December 5, 2006.

### **I. General Remarks Regarding the Content of this Amendment**

Upon entry of this Amendment, claims 7-23 and 30-37 will remain pending in this application. Through this Amendment, Applicant has amended independent claims 7 and 30 to recite that the mesh or braided portion of the closure system extends “over a top instep portion of the foot-housing member from a lateral side of the foot-receiving device to a medial side of the foot-receiving device...” Claim 16 has been similarly amended. Support for these changes may be found, for example, in original Figures 1-3 and 7, which illustrate the mesh or braided panel 122 extending over and across the top instep portion of the wearer’s foot and the illustrated foot housing member or upper member from a lateral side of the footwear product to a medial side of the footwear product.

Applicant makes the above noted claim changes for purposes of expediting prosecution and to facilitate the early allowance of this application. This action should not be construed as an admission or acknowledgement that Applicant agrees with any grounds of rejection raised in the Final Office Action of December 5, 2006. Applicant reserves all rights with respect to the original and/or previously submitted claims, including the right to present claims of the same or similar scope in the future (*e.g.*, in a continuing application).

For the reasons described above, Applicant submits that no new matter is included in this Amendment. Also, no claim fees are believed to be due in presenting this Amendment.

### **II. Applicant’s Claims Patentably Distinguish from the Cited Art**

#### **A. Claims 7, 8, 10, 11, 13-17, 19, 21-23, 30, 31, 33, 34, 36, and 37 Patentably Distinguish from Allen**

Claims 7, 8, 10, 11, 13-17, 19, 21-23, 30, 31, 33, 34, 36, and 37 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Allen, et al., U.S. Patent No. 5,497,564 (hereinafter

“Allen”). *See* the December 5, 2006, Final Office Action at page 2. Applicant respectfully traverses this rejection and requests reconsideration.

For anticipation to exist, each and every element of the claimed invention must be shown in a single prior art reference. *See The Manual of Patent Examining Procedure (“M.P.E.P.”) § 2131*, and the cases cited therein. Moreover, for anticipation to exist, this single prior art reference must show the claimed elements arranged in the same manner as recited in the claim. *Id.* As will be demonstrated below, the Allen patent fails to anticipate Applicant’s claimed invention.

For example, Applicant’s independent claims 7, 16 and 30 recite a mesh or braided panel of a foot-receiving device (claims 7 and 30) or article of footwear (claim 16) closure system that at least partially extends around the foot-housing member (claims 7 and 30) or upper member (claim 16), over a top instep portion of the foot-housing member or upper member from a lateral side of the foot-receiving device (or article of footwear) to a medial side of the foot receiving device (or article of footwear). Allen does not teach or suggest this claimed mesh or braided panel arrangement.

In the Office Action, the Office points to Fig. 6 and element 98 in Allen as illustrating a closure system including a mesh material. *See* the December 5, 2006, Final Office Action at page 2. However, Fig. 6 of Allen, and as even more clearly shown in Figs. 3 and 5 of Allen, does not illustrate, and the patent does not describe, a closure system in which a mesh or braided panel extends “over a top instep portion of the foot-housing member from a lateral side of the foot-receiving device to a medial side of the foot-receiving device”, as recited in Applicant’s independent claims 1 and 30 (and similarly recited in claim 16). *See* Figs. 3, 5 and 6 of Allen reproduced below. Instead, Allen discloses an elastic mesh material 100, but such material is provided along the side of the shoe 12 and clearly does not extend over a top instep portion of the foot-housing member from a lateral side of the foot-receiving device to a medial side of the foot-receiving device. Therefore, Allen does not teach or suggest the recited claim feature.

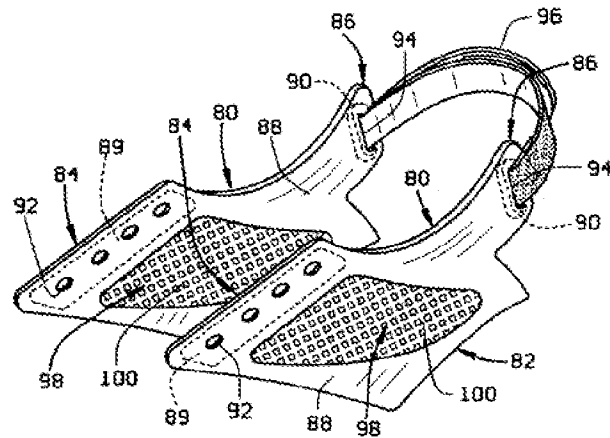


FIG. 6

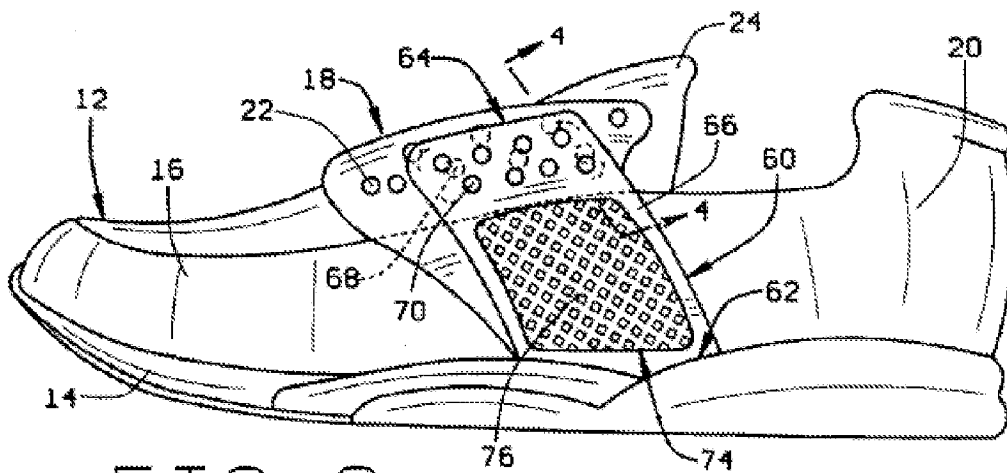


FIG. 3

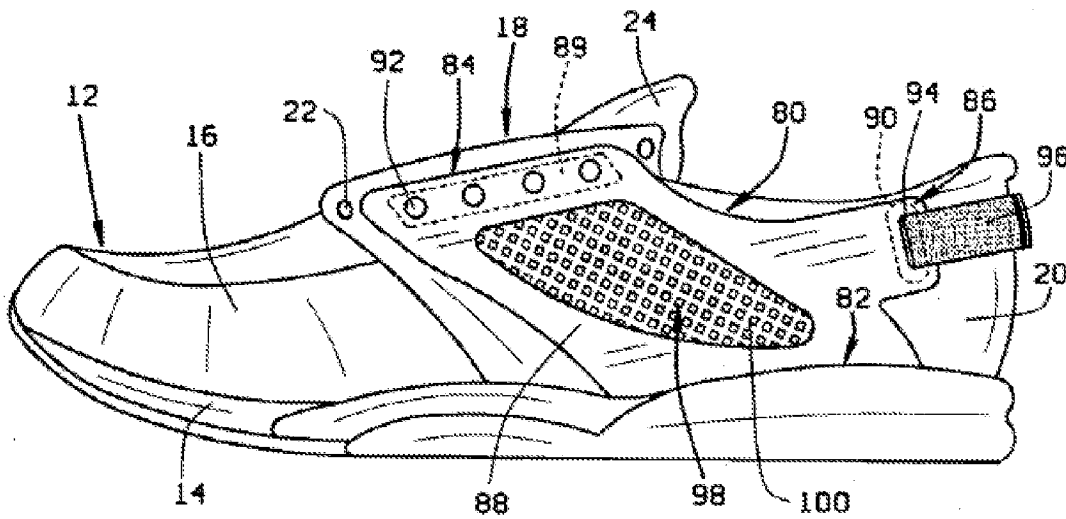


FIG. 5

Applicant's claims 15, 23, and 37 further patentably distinguish from Allen. These claims recite that the mesh or braided panel-including closure system at least partially covers a secondary closure system. Nothing in Allen teaches or suggests this feature of claims 15, 23 and 37. Rather, even if, the shoelace and eyelets of the closure system shown Figure 6 of Allen is considered to be the claim recited "secondary closure system", as alleged by the Office (*see* the Final Office Action at page 2), Allen still does not disclose or suggest the claimed recitation. As illustrated in Figs. 3, 5 and 6 of Allen, the mesh or braided panel of Allen does not partially cover the shoelaces and eyelets. Instead, as illustrated in these figures, Allen's shoelace and eyelets extend between Allen's two separate mesh containing panels. As clearly illustrated in Figs. 3, 5, and 6 of Allen, the mesh or braided panel does not overlay the shoelace and eyelets.

For these reasons, Applicant respectfully submits that the present claims patentably distinguish from Allen. Withdrawal of the rejections and allowance of these claims are earnestly solicited.

**B. Claims 9, 12, 18, 20, 32, and 35 Patentably Distinguish from the Combination of Allen and Towns**

Claims 9, 12, 18, 20, 32, and 35 stand rejected under 35 U.S.C. § 103(a) as allegedly rendered obvious from the combination of Allen in view of Towns, et al., U.S. Patent No. 6,532,687 (hereinafter “Towns”). *See* the December 5, 2006, Final Office Action at pages 2-3. Applicant respectfully traverses this rejection and requests reconsideration.

Claims 9, 12, 18, 20, 32, and 35 depend, directly or indirectly, from one of independent claims 7, 16, and 30, discussed above. Towns does not overcome the deficiencies of Allen with respect to the various independent claims described above, nor is Towns relied upon by the Office for this purpose. Accordingly, Applicant respectfully submits that these claims patentably distinguish from the combination of Allen and Towns. Withdrawal of the rejections and allowance of these claims are earnestly solicited.

**III. Conclusion**

If the Examiner believes that a telephone conference or a personal interview will be useful to advance the prosecution of this application and/or to place the application in condition for allowance, he is invited to contact the undersigned attorney.

Applicant believes that no fees are due for entry and consideration of this Amendment. If, however, the Office determines that any fees are required, such as fees under 37 C.F.R. §§ 1.16 and/or 1.17, or if an extension of time is necessary that is not accounted for in the documents filed with this Amendment, the Commissioner is authorized to debit our Deposit Account No. 19-0733 for any necessary fees, including any necessary extension fees or other fees needed to maintain the pending status of this patent application.

Application of Michael R. Friton – U.S. Patent Appln. No. 10/776,242

All rejections having been addressed, Applicant respectfully submits that this application is in condition for immediate allowance. Allowance of this application is earnestly solicited.

Respectfully submitted,

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